an arbitrary requirement can be based only on the notion that a court of equity will enforce a contract whenever it is sufficiently satisfied of its existence. Since, however, the statute of frauds expressly provides that all contracts for the sale of land must be evidenced in writing signed by the party to be charged,[5] the court in upholding a contract proved in any other way is acting in direct contravention to the statute. The ground, if any, for equitable interference in such cases is that the defendant should be charged, not upon the contract itself, but upon the equities resulting from its partial execution,[6] thus enforcing specific performance apart from the statute of frauds, and not in spite of it. In conformity with this reasoning several states in this country, notably Massachusetts, follow a rule seemingly superior to that laid down by the majority of jurisdictions. The case usually arises in the following way: The plaintiff enters upon the land and in reliance on the contract to convey erects improvements costing more than their intrinsic value, so that even if he were allowed a quasi-contractual action he could not recover adequate damages. In consequence of these cases, it is commonly said that part performance, in order to take the case out of the statute of frauds, must consist of a change of possession accompanied by such acts on the part of the purchaser that adequate compensation can be given him only by a conveyance of the premises.[7] From this it might appear that change of possession is necessary and that the plaintiff must always be the purchaser. But since the rule would seem to depend on the fact that unless specific performance is granted, the plaintiff will inevitably be damaged through his reliance on the defendant's representations, a proper case for its application may readily arise, where there is no change of possession and the plaintiff is the seller. An example is furnished by the facts of a late English case, where the plaintiff, in reliance on the defendant's oral promise to buy a portion of his land, built a house on it according to the latter's specifications. *Dickenson* v. *Barrow*, [1904] 2 Ch. 339. Though the case went off on another point, if the improvements made in anticipation of the sale were more expensive than valuable, it is difficult to see why specific performance should not have been granted here under the Massachusetts rule.

PURCHASE FROM THE GRANTOR OF A DEED IN ESCROW. — Delivery of the deed is necessary to pass the title to land, and escrow is a method of delivery. Under the general rule, this delivery does not avail to pass the title until the performance of the conditions or the happening of the contingency upon which the deed is held in escrow;[1] but if for any reason such as insanity, coverture, or death, the grantor becomes incapacitated from passing title before the delivery out of escrow, this second delivery is by the fiction of relation carried back to the time of the delivery into escrow so as to make the title pass as of that time.[2] Since then, in the ordinary case, it is not the grantor's deed until the second delivery, the question arises whether a subsequent grantee getting a conveyance before the performance of the conditions of the escrow would get a title indefeasible at

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[5] Stat. 29 Car. II., ch. iii. sec. iv.
[6] *Per* Selbourne, L. J., in Maddison *v.* Alderson, *supra.*
[7] Glass *v.* Hurlbert, 102 Mass. 24; Burns *v.* Daggett, 141 Mass. 368.

[1] Smith *v.* South Royalton Bank, 32 Vt. 341.
[2] Webster *v.* Kings County Trust Co., 145 N. Y. 275.

law. It is the policy of the law to favor the grant in escrow. At least it is not regarded as just that one charged with notice of the grant in escrow should nevertheless take a complete legal title; and all jurisdictions agree that he cannot, though there may be an exception where the original grantee is a volunteer. Since however the cases reach this result on different grounds, a conflict arises as to whether an innocent purchaser will take a complete legal title.

Some jurisdictions cut off the intervening grant to a purchaser with notice by extending the use of the fiction of relation.[3] But as it is a general doctrine that a fiction invoked to do justice should not be used against innocent third parties,[4] in these jurisdictions a *bona fide* purchaser from the grantor of a deed in escrow takes an indefeasible title,[5] and this doctrine has been recently followed. *Emmons* v. *Harding*, 70 N. E. Rep. 142 (Ind., Sup. Ct.).

Other jurisdictions do not allow an innocent purchaser to defeat the grantee in escrow.[6] These jurisdictions hold that after the deed is placed in escrow the grantor no longer has full legal title. The grant in escrow puts the land out of his power and makes it possible for the grantee to get something analogous to specific performance at law. All that the grantor has is a title subject to a defeasance, and a title subject to a defeasance is all that a purchaser from him, whether *mala fide* or *bona fide*, can buy.[7] Therefore, notwithstanding the intervention of third parties, the grantee in escrow gets a full legal title upon performance of the conditions.[8] The latter decisions invoke no fiction in reaching this result and seem to support the better rule.

COMMUNICATION OF REVOCATION. — An offer to make a contract is good, generally speaking, until revoked. A question presenting considerable difficulty, however, is whether knowledge by the offeree, indirectly acquired, that the offerer intends to revoke or has done an act inconsistent with the continuance of the offer, is sufficient revocation. The leading case on the subject is Dickinson *v.* Dodds.[1] The defendant offered to sell to the plaintiff certain land. On the following day knowledge came indirectly to the plaintiff that the defendant was negotiating a sale of the property to another; whereupon the plaintiff, before any notice of revocation had been communicated to him by the defendant, handed the latter an acceptance of his offer. The defendant, having already sold the land to another, refused to perform, and the plaintiff brought a bill in equity against the defendant and his vendee. The court refused to grant specific performance. The case has been followed in Maryland,[2] and is again approved and followed in a late Wyoming case. *Frank* v. *Stratford-Handcock*, 77 Pac. Rep. 134. While in each of these cases the plaintiff is praying specific performance, which it would seem could not be granted in any event, since the vendee's right to the property is equal and arose prior to

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[3] McDonald *v.* Huff, 77 Cal. 279.
[4] Viner's Abdg. tit. "Relation."
[5] Wolcott *v.* Johns, 7 Col. App. 360.
[6] Hall *v.* Harris, 5 Ired. Eq. (N. C.) 303.
[7] Hooper *v.* Ramsbottom, 6 Taunt. 12; Fort *v.* Beekman, 1 Johns. Ch. (N. Y.) 288.
[8] Leiter *v.* Pike, 127 Ill. 287.

[1] L. R. 2 Ch. D. 463.
[2] Coleman *v.* Applegarth, 68 Md. 21.